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UNEMPLOYMENT TAX AMENDMENT

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Jim Bird

LONG TITLE

General Description:

This bill modifies the Employment Security Act by amending the unemployment insurance contribution rate for employers.

Highlighted Provisions:

This bill:

- ▶ extends the cap of the social unemployment insurance contribution rate for all employers at 0.4% to include calendar year 2013; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-4-303, as last amended by Laws of Utah 2012, Chapter 15

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **35A-4-303** is amended to read:

35A-4-303. Determination of contribution rates.

(1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio



28 and is determined by dividing the total benefit costs charged back to an employer during the
29 immediately preceding four fiscal years by the total taxable wages of the employer for the same
30 time period, calculated to four decimal places, disregarding any remaining fraction.

31 (b) In calculating the basic contribution rate under Subsection (1)(a), if four fiscal years
32 of data are not available:

33 (i) the data of the number of complete fiscal years that is available shall be divided by
34 the total taxable wages for the same time period; or

35 (ii) if the employer is a new employer, the basic contribution rate shall be determined
36 as described in Subsection (5).

37 (2) (a) Subject to Subsection (2)(b), the division shall determine the social contribution
38 rate by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the
39 preceding four fiscal years by the total taxable wages of all employers subject to contributions
40 for the same period, calculated to four decimal places, disregarding any remaining fraction, and
41 rounding the result to three decimal places as follows:

42 (i) if the fourth decimal place is four or less, the third decimal place does not change;
43 or

44 (ii) if the fourth decimal place is five or more, rounding the third decimal place up.

45 (b) For calendar ~~[year]~~ years 2012 and 2013 only, if the calculation of the social
46 contribution rate under Subsection (2)(a) is greater than ~~[-.004]~~ 0.004, the social contribution
47 rate for that calendar year ~~[2012]~~ is ~~[-.004]~~ 0.004.

48 (3) (a) The division shall set the reserve factor at a rate that sustains an adequate
49 reserve.

50 (b) For the purpose of setting the reserve factor:

51 (i) the adequate reserve is defined as between 18 and 24 months of benefits at the
52 average of the five highest benefit cost rates in the last 25 years;

53 (ii) the division shall set the reserve factor at 1.0000 if the actual reserve fund balance
54 as of June 30 preceding the computation date is determined to be an adequate reserve;

55 (iii) the division shall set the reserve factor between 0.5000 and 1.0000 if the actual
56 reserve fund balance as of June 30 preceding the computation date is greater than the adequate
57 reserve;

58 (iv) the division shall set the reserve factor between 1.0000 and 1.5000 if the actual

59 reserve fund balance as of June 30 prior to the computation date is less than the adequate
60 reserve;

61 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
62 insolvent or negative or if there is an outstanding loan from the Federal Unemployment
63 Account or other lending institution, the division shall set the reserve factor at 2.0000 until the
64 actual reserve fund balance as of June 30 preceding the computation date is determined by the
65 division to be solvent or positive and there is no outstanding loan;

66 (vi) the division shall set the reserve factor on or before January 1 of each year; and

67 (vii) money made available to the state under Section 903 of the Social Security Act,
68 42 U.S.C. 1103, as amended, which is received on or after January 1, 2004, may not be
69 considered in establishing the reserve factor under this section for the rate year 2005 or any
70 following rate year.

71 (4) (a) Beginning January 1, 2009, an employer's overall contribution rate is:

72 (i) except as provided in Subsection (4)(a)(ii) or (iii), the employer's basic contribution
73 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four
74 decimal places, disregarding any remaining fraction, plus the social contribution rate
75 established under Subsection (2), and the result calculated to three decimal places, disregarding
76 any remaining fraction;

77 (ii) if under Subsection (4)(a)(i), the overall contribution rate calculation for an
78 employer is greater than 9% plus the applicable social contribution rate, the overall
79 contribution rate for the employer shall be reduced to 9% plus the applicable social
80 contribution rate; or

81 (iii) if under Subsection (4)(a)(i), the overall contribution rate calculation for a new
82 employer is less than 1.1%, the overall contribution rate for the new employer shall be
83 increased to 1.1%.

84 (b) Beginning January 1, 2012, an employer's overall contribution rate is:

85 (i) except as provided in Subsection (4)(b)(ii) or (iii), the employer's basic contribution
86 rate multiplied by the reserve factor established under Subsection (3)(b), calculated to four
87 decimal places, disregarding any remaining fraction, plus the social contribution rate
88 established under Subsection (2), and the result calculated to three decimal places, disregarding
89 any remaining fraction;

90 (ii) if under Subsection (4)(b)(i), the overall contribution rate calculation for an
91 employer is greater than 7% plus the applicable social contribution rate, the overall
92 contribution rate for the employer shall be reduced to 7% plus the applicable social
93 contribution rate; or

94 (iii) if under Subsection (4)(b)(i), the overall contribution rate calculation for a new
95 employer is less than 1.1%, the overall contribution rate for the new employer shall be
96 increased to 1.1%.

97 (c) The overall contribution rate described under this Subsection (4) does not include
98 the addition of any penalty applicable to an employer:

99 (i) as a result of delinquency in the payment of contributions as provided in Subsection
100 (9); or

101 (ii) that is assessed a penalty rate under Subsection 35A-4-304(5)(a).

102 (5) (a) Except as otherwise provided in this section, the basic contribution rate for a
103 new employer is based on the average benefit cost rate experienced by employers of the major
104 industry, as defined by department rule, to which the new employer belongs.

105 (b) Except as provided in Subsection (5)(c), by January 1 of each year, the basic
106 contribution rate to be used in computing a new employer's overall contribution rate under
107 Subsection (4) is the benefit cost rate that is the greater of:

108 (i) the amount calculated by dividing the total benefit costs charged back to both active
109 and inactive employers of the same major industry for the last two fiscal years by the total
110 taxable wages paid by those employers that were paid during the same time period, computed
111 to four decimal places, disregarding any remaining fraction; or

112 (ii) 1%.

113 (c) If the major industrial classification assigned to a new employer is an industry for
114 which a benefit cost rate does not exist because the industry has not operated in the state or has
115 not been covered under this chapter, the employer's basic contribution rate is 5.4%. This basic
116 contribution rate is used in computing the employer's overall contribution rate under
117 Subsection (4).

118 (6) Notwithstanding any other provision of this chapter, and except as provided in
119 Subsection (7), if an employing unit that moves into this state is declared to be a qualified
120 employer because it has sufficient payroll and benefit cost experience under another state, a

121 rate shall be computed on the same basis as a rate is computed for all other employers subject
122 to this chapter if that unit furnishes adequate records on which to compute the rate.

123 (7) An employer who begins to operate in this state after having operated in another
124 state shall be assigned the maximum overall contribution rate until the employer acquires
125 sufficient experience in this state to be considered a "qualified employer" if the employer is:

126 (a) regularly engaged as a contractor in the construction, improvement, or repair of
127 buildings, roads, or other structures on lands;

128 (b) generally regarded as being a construction contractor or a subcontractor specialized
129 in some aspect of construction; or

130 (c) required to have a contractor's license or similar qualification under Title 58,
131 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

132 (8) (a) If an employer acquires the business or all or substantially all the assets of
133 another employer and the other employer had discontinued operations upon the acquisition or
134 transfers its trade or business, or a portion of its trade or business, under Subsection
135 35A-4-304(3)(a):

136 (i) for purposes of determining and establishing the acquiring party's qualifications for
137 an experience rating classification, the payrolls of both employers during the qualifying period
138 shall be jointly considered in determining the period of liability with respect to:

139 (A) the filing of contribution reports;

140 (B) the payment of contributions; and

141 (C) the benefit costs of both employers;

142 (ii) the transferring employer shall be divested of the transferring employer's
143 unemployment experience provided the transferring employer had discontinued operations, but
144 only to the extent as defined under Subsection 35A-4-304(3)(c); and

145 (iii) if an employer transfers its trade or business, or a portion of its trade or business,
146 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
147 employer's unemployment experience.

148 (b) An employing unit or prospective employing unit that acquires the unemployment
149 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
150 of acquisition.

151 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in

152 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
153 the employer's business to another and by ceasing operations as of the date of the transfer, the
154 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
155 transfer.

156 (9) (a) A rate of less than the maximum overall contribution rate is effective only for
157 new employers and to those qualified employers who, except for amounts due under division
158 determinations that have not become final, paid all contributions prescribed by the division for
159 the four consecutive calendar quarters in the fiscal year immediately preceding the computation
160 date.

161 (b) Notwithstanding Subsections (1), (5), (6), and (8), an employer who fails to pay all
162 contributions prescribed by the division for the four consecutive calendar quarters in the fiscal
163 year immediately preceding the computation date, except for amounts due under
164 determinations that have not become final, shall pay a contribution rate equal to the overall
165 contribution rate determined under the experience rating provisions of this chapter, plus a
166 surcharge of 1% of wages.

167 (c) An employer who pays all required contributions shall, for the current contribution
168 year, be assigned a rate based upon the employer's own experience as provided under the
169 experience rating provisions of this chapter effective the first day of the calendar quarter in
170 which the payment was made.

171 (d) Delinquency in filing contribution reports may not be the basis for denial of a rate
172 less than the maximum contribution rate.

173 (10) If an employer makes a contribution payment based on the overall contribution
174 rate in effect at the time the payment was made and a provision of this section retroactively
175 reduces the overall contribution rate for that payment, the division:

176 (a) may not directly refund the difference between what the employer paid and what
177 the employer would have paid under the new rate; and

178 (b) shall allow the employer to make an adjustment to a future contribution payment to
179 offset the difference between what the employer paid and what the employer would have paid
180 under the new rate.

Legislative Review Note
as of 1-4-13 2:30 PM

Office of Legislative Research and General Counsel